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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,336	10/21/2003	Mark Beutler	BEUTLER, MARK #5	2195
40992	7590	01/20/2006	EXAMINER	
THOMAS R. LAMPE BIELN, LAMPE & THOEMING 1390 WILLOW PASS ROAD, SUITE 1020 CONCORD, CA 94520			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/690,336		BEUTLER, MARK	
	Examiner		Art Unit	
	Tri M. Mai		3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 12, 15, 22-25, 27 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 13, 14, 16-21, 26, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 7-10, 12, 15, 22-25, 27, and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.

2. Claim 1, 3-4, 11, 13, 14, 16, 18-19, ^{T.M.}~~20~~, 26, and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuhn et al. (5305951). Kuhn teaches the folding of a blank having four quadrant first and second fold lines (first line is comprised of 50, 50, and 55, the second fold line is portion 36) both lines are disposed opposite of an imaginary diagonal line.

With respect to the imaginary line, it is submitted that an "imaginary line" does not constitute a positive structure since no structure can be realized by "imaginary". Furthermore, there are a plurality of imaginary lines can be drawn between the first (37) and second (line 62 and two end lines 52 and 57). Note that the claim does not limit the imaginary lines to be straight lines.

With respect to the method claims, note Kuhn teaches the folding of the blank along all of the first fold lines (41, 38, 36 and 36), and the folding along the second folding lines as shown in Figs. 3 and 4), and the top panels extend inwardly from the side panels over the bottom to enclosure the hollow interior and form the container top as claimed.

3. Claims 2, 5, 6, 17, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhn in view of Beutler '862 or Beutler '028. It would have been obvious to one of ordinary skill in the art to provide the sidewall with a curved sidewall to provide the desired shaped sidewall for the container.

4. Claims 1-6, 11, 13, 14, 16-21, 26, and 28-29 are rejected under U.S.C. 102(b) as being anticipated by either Beutler (D457028) or Beutler (D442862), or in the alternative, under 35

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U.S.C. 103(a) as being unpatentable over either Beutler '028 or Beutler '862 in view of Kuhn or Chadwicks, II (4492723). Beutler teaches a container with four curved sidewalls. With respect to the method as claimed. The container as shown would have been inherently erected by the steps as set forth. With respect to the blank as claimed, the container as shown by Beutler '028 would have been inherently erected by a blank as set forth in the claim.

To the degree it is argued that Beutler '028 or Beutler '862 does not teach the method as claimed, it would have been obvious to one of ordinary skill in the art to erect the container from a unitary blank in Beutler as taught by Kuhn et al. or Chadwicks II to provide a material for the construction of the container.

The lines defining the sidewalls in either Beutler '028 or Beutler '862 would have a portion being straight.

5. Claims 3, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the rejection of either Beutler '028 or Beutler '862 rejection as set forth above, and further in view of Boyle et al. (4313556). To the degree it is argued that either Beutler '028 or Beutler '862, Boyle teaches that it is known in the art to provide equivalents to curved portions as shown in fig. 6A-6C. It would have been obvious to one of ordinary skill in the art to provide straight portions in either Beutler '028 or Beutler '862 as taught by Boyle to provide alternative shape for the sidewalls.

6. Applicant's arguments filed have been fully considered but they are not persuasive. With respect to the Kuhn reference, as set forth above, the examiner submits that an "imaginary line" does not constitute a positive structure since no structure can be realized by "imaginary". Furthermore, there are a plurality of imaginary lines can be drawn between the first (37) and

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second (line 62 and two end lines 52 and 57). Note that the claim does not limit the imaginary lines to be straight lines. In other words, one curved line can be drawn between the first and second lines in Kuhn.

With respect to the method claims, note Kuhn teaches the folding of the blank along all of the first fold lines (41, 38, 36 and 36), and the folding along the second folding lines as shown in Figs. 3 and 4), and the top panels extend inwardly from the side panels over the bottom to enclosure the hollow interior and form the container top as claimed.

With respect to the 102 rejections of either Beutler '028 or Beutler '862, the Examiner submits that the container in either Beutler '028 or Beutler '862 are inherently made from a blank since there is no other way to imaging how to make the container shown in either Beutler '028 or Beutler '862. A molded container would not have the interlocking of the closure flaps. Furthermore, other than the imaginary lines, either Beutler '028 or Beutler '862 meets all claimed limitations with respect to the container as claimed. However, the imaginary lines are not positive structures since they are just imaginary. With respect to the method claims, as set forth above the claim only recites the steps of folding the first and second folding lines. It is submitted that the container in either Beutler '028 or Beutler '862 inherently having their first and second folding lines folded so that the container as shown in the figure is erected.

Even to the degree it is argued that Beutler '028 or Beutler '862 does not teach the method as claimed, it would have been obvious to one of ordinary skill in the art to erect the container from a unitary blank in Beutler as taught by Kuhn et al. or Chadwicks II to provide a material for the construction of the container.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

